



NORTH
CAROLINA
DEPARTMENT
OF REVENUE

Worker Misclassification

ITIN

SSN

- Employee v. Independent Contractor
 - W-2 issued to an employee
 - 1099-MISC – nonemployee compensation issued to contractor
- State Issues:
 - Unemployment Insurance
 - Workman's Compensation
 - Income tax withholding

- Whether the principal is legally responsible for the acts or omissions of the agent or worker
- Whether the principal has the right to direct and control the agent or worker
- Three components of the common law standard
 - **Behavioral**
 - **Financial**
 - **Relationship**

- Right to direct and control the **behavior** of the worker
 - Detailed Instructions
 - Performance evaluation
 - Consistent, on-going training

- Right to direct and control the **financial** aspects of the worker's job
 - Significant investment
 - Unreimbursed expenses
 - Services available to the relevant market

- Right to direct or control as a result of the **relationship** of the parties
 - Contracts must have substance over form
 - Employee benefits

- DOR initiatives to mitigate income tax loss
 - IRMF – non-filers
 - IRTF – non-filers
 - Schedule C
 - ITIN
 - 4% ITIN

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- Information Return Master File
 - Federal Exchange Agreement
 - Data includes multiple income sources
 - Matching process with multiple data sources
 - Non-filers for Federal and State individual income tax return
 - Assessment for North Carolina individual income tax

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- Individual Return Transaction File
 - Federal data exchange
 - Matching process with multiple data sources
 - Filed a Federal return but non-filer for NC individual income tax
 - Assessment for North Carolina individual income tax

- Data mining of filed income tax returns
- Selection of audit candidates
- Assignment to service center locations
- Primary compliance issues
 - Overstatement of business expenses
 - Understatement of income

1099-MISC non-employee compensation to SSN		
2010 baseline year		
		1099-MISC
	<u>Number</u>	<u>Amount</u>
SSN 1099-MISC	550,908	\$10,515,935,763
Less:		
SSN filers (tax due or refund)	437,787	\$7,265,678,986
Schedule C initiative	1,047	\$4,965,944
SSN non-filers	113,121	\$1,875,239,100
IRMF/IRTF selected candidates	28,492	\$522,450,989
SSN nonfilers not selected	84,629	\$1,352,788,111
Non-selected population		
does not meet selection criteria		
D-400 filed returns		
Requested refund from filers		\$221,410,346
total tax due from filers		\$183,536,199

- Individual Taxpayer Identification Number
- Issued to any individual with a U.S. tax filing requirement
- Ineligible to obtain a Social Security Number
- ITIN does not authorize work in the U.S.
- Is not valid for employment purposes
- Begins with a 9 and the fourth digit is a 7 or 8

The Internal Revenue Service (IRS) advises “generally, you can get a social security number if you have been lawfully admitted to the United States for permanent residence or under other immigration categories that authorize U.S. employment”

- Individual issued an ITIN for tax filing purposes
- Gain employment under a false social security number
- Employer issues W-2 under the false SSN
- Worker files tax return using ITIN
- Return reflects inflated refund request
 - Incorrect filing status
 - Excessive exemptions up to tax year 2013
 - Excessive tax credits

- ITIN compliance initiative implemented in 2004
- Request documentation prior to processing return
- Determine proper refund
- Release correct refund amount to taxpayer
- Assess any additional tax liability properly due
- Minimize collection resources & uncollectible accounts receivable

Tax Savings as a result of the ITIN initiative:

- ❑ 2008 tax year
 - 4,042 tax returns reviewed
 - \$4,350,354 tax savings
 - 93% of returns reviewed were adjusted

- ❑ 2009 Tax year
 - 8,750 tax returns reviewed
 - \$6,847,761 tax savings
 - Broadened selection criteria
 - 77% of returns reviewed were adjusted

- ❑ 2010 Tax year
 - 5,993 tax returns reviewed
 - \$5,759,598 tax savings
 - 85% of returns reviewed were adjusted

- ❑ 2011 Tax year
 - 6,056 tax returns reviewed
 - \$5,415,519 in tax savings
 - 87% of returns reviewed were adjusted

- ❑ 2012 Tax Year
 - 4,717 tax returns reviewed
 - \$4,125,179 in tax savings
 - 86% of returns reviewed were adjusted

- ITIN holders receiving 1099 Misc. payments
- Non-filers
 - Cash transactions
 - Cannot locate the income earner
- Filers
 - Underreported income
 - Overstatement of expenses
 - False identification documents
 - Documents in foreign language

- G.S. 105-163.3 effective January 1, 2010
- 4% withholding on compensation paid to ITIN contractors
- Annual Statement to ITIN holder of amount withheld
- Payers must register for withholding tax payments
- Withholding payments made by payer directly to the Department

- 4% ITIN withholding initiative
- Assessments for failure to properly withhold 4%
 - Period January 1, 2011 through December 31, 2011
 - 279 cases
 - \$2.2 million
- Emerging issue:
 - ITIN holders are providing false Federal Employer Identification Number (FEIN)
 - Providing false SSN

1099-MISC non-employee compensation to ITIN		
2010 baseline year		
		1099-MISC
	<u>Number</u>	<u>Amount</u>
ITIN holders 1099-MISC	18,733	\$423,550,903
Less:		
ITIN filers (tax due or refund)	8,324	\$125,399,886
ITIN initiative	5,993	\$5,759,598
ITIN non-filers	10,449	
IRMF/IRTF selected candidates	838	\$17,763,327
ITIN non-filers not selected	9,611	\$195,901,235
Non-selected population		
does not meet selection criteria		
4% ITIN initiative	279	\$2,186,564
<u>D-400 filed returns</u>		
Requested refund from filers		\$1,801,075
total tax due from filers		\$558,619